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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the Federal Communications Commission
Washington, DC 20554

In the matter of	)	
Implementation of the	)	
Cable Television Consumer	)	MM Docket No. 92-266
Protection and Competition	)	
Act of 1992	)	
	)	
Rate Regulation	)	

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To: The Commission

Comments of
The Northwest Municipal Cable Council

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To: The Commission

Comments of
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The Northwest Municipal Cable Council offers their comments in the matter of rate regulation. We have attempted to answer as many of the questions asked by the Commission as we reasonably can.

Even though the certification requirements for regulation of rates calls for the available staff to administer such regulation, we ask you to bear in mind that municipal budgets are very strained at this time. Though a staff person will probably be assigned this task, it is most likely that this person will also handle many other responsibilities. It is also likely that this person will not be versed in cable finances or the potential consequences of overzealous regulation. We need to keep the process as simple and fair as possible. Therefore the benchmark approach would be best. But there are some concerns with this approach. It is more than obvious at this point that the Buy-Through provisions are not going to work as Congress had intended. We never thought they would. We would not want to see regulations in place that would discourage operators from putting more programming on the basic tier. We also have many different numbers of broadcast and PEG channels available throughout the country. In some rural areas there may only be a few channels available. In the Chicago area, we have 13 off-airs and 10 access channels available.

The consumers are fully expecting their bills to go down as a result of this legislation. There will be political ramifications if this does not happen. If the rules turn out to be a round about way of allowing business as usual, nothing will have been accomplished. It will take a lot of careful scrutiny to strike a balance between the consumer rates and cable operators' profitability. TCI is now breaking out a broadcast basic tier. The total price that customers will pay will remain the same. TCI's increases in this system come July 1. This means we will be one of the first areas affected by the new rules. We will be faced with a lot of pressure to not allow a rate increase of any kind. If under the new rules, the customers rates still go up by the same 5% they would have without the rules, we are going to have a major political problem.

A concern here is the current pricing for the new basic tier. TCI has just announced that the basic tier containing the off-air and access channels will be $10.00 (plus 5% for franchise fees), and the expanded basic will be $9.20

(plus 5% for franchise fees). At first glance we would say it is a bad marketing move to place a higher value on the off-airs and access channels than they would on their own product which they pay for. You would think that this move would certainly give credence to the retransmission proponents. In the Skokie system, TCI has threatened to tack one percent onto the franchise fee line item on the monthly bill for public access requirements. This would amount to an average of 25¢. Are they really saying that the 12 off-airs which they carry are worth \$9.75 (plus 5% for franchise fees), and the 30 channels carried on expanded basic are only worth \$9.20 (plus 5% for franchise fees), or are they subsidizing the cost of expanded basic by overcharging basic only subscribers? Or will we see a dramatic raise the rates on the expanded basic tier July 1, 1993 with a statement that it had been underpriced? Post-Newsweek charges \$10.00 a month more. If that goes unchallenged, you can be sure that other operators will feel comfortable following suit.

Proposed Alternatives for setting Benchmark Rates

Cost of Service:

TCI states that it cost them \$10.00 per month to deliver that programming to the home. They told us in 1990 that it cost them \$3.00 per month to deliver a second cable capable of carrying 60 channels to the home. That is quite a discrepancy. In 3 years it costs over three times as much to deliver one third of the service?

The Paul Kagan Marketing New Media report published in the December 14, 1992 edition of **CABLEWORLD** magazine, stated that the top ten, top of the rate card fees for cable networks averaged 20¢ per month. Some programming goes for as little as 1¢ - 4¢, but for the sake of simplicity, lets say all of the cable networks average 20¢ per month. We have 28 such channels which would cost \$5.60 per month. We all know that TCI gets a substantial discount, but even so, \$9.20 is a very reasonable price for this programming. **Warren's Cable Regulation Monitor**, Vol.1, No. 1 of January 25, 1993 states that "programming expense generally accounts for less than 1/3 of systems' operating costs,". How can you say that the channels that people can receive for free over the air are worth an average of 81¢ a month? Jack Goodman fully expects that the broadcasters can get \$1.00 to \$ 2.00 per month. It's just not palatable.

Average Per Channel Rates:

Warren's Cable Regulation Monitor surveyed 200 cable systems. They reported that subscribers' current cost per channel ranged from 44.3¢ in the largest systems to 61.3¢ in the smallest systems. Even if we took the highest per channel cost of 61.3¢ times the 12 off-air stations, plus the 25¢ that TCI says it cost to deliver PEG channels, you would still only come up with a rate of \$7.61. Our system currently has 42 channels, not including access channels, at a rate of 19.20. That would put the cost per channel at 46¢. Using the same formula, the price for the broadcast basic should be \$5.77.

Rates by systems facing effective competition:

Typically in this situation, rates have been artificially low until one of the competitors is driven out. When evaluating the information from these systems, we would suggest looking at this alternative only in situations where the competition has existed for at least five years. It could then be assumed that the situation is working and the rates are not artificially low. This does not seem to be a workable alternative overall, but if systems who have faced competition over a 5 year period are considered as part of the process of establishing benchmark rates, it will give a good indication of the lowest feasible rates.

Past Regulated Rates:

One of the reasons given for the quick increases in rates after deregulation was that regulation kept the rates artificially low. On the other hand, the programming that will be contained in the new basic tiers is virtually free with the exception of the cost of providing that programming to the consumer. The cost for rebuild and upgrades are already more than reflected in today's rates. That is why we are going through this exercise now.

We would suggest that since everyone seems to agree that the rates charged in 1986 were reasonable at an average of $5.95, that we take that figure and add 5% per year. Since the cost for the programming itself has been 0, that would more than cover any increase in the cost of delivery. That would give us a price of $8.37. That seems fair for a large metropolitan area such as Chicago where an abundance of stations are available. Is that a fair price in rural Arkansas where there are only a few channels available?

Surprisingly, cable rates have been fairly consistent throughout the country. Warren's Cable Regulation Monitor found average rates to be in the $21.95 to $22.95 range, no matter what the system size. Rate comparisons done in our area have also come up with average rates within a couple of dollars with the average coming in at $22.75. That figure is high because of Post-Newsweek. They are $6.00 a month higher than the next highest priced system. They were thrilled that they had gotten their rate increase in before the legislation passed.

Subscribers in smaller systems have typically paid the same for less service. There are economics which justify this. This would also mean that we really only one benchmark for a basic tier that contain only off-airs and PEG. It further seems that no matter how you go about it, the range will be between $5.75 and $8.50. We doubt that you will find many operators who will leave any other programming on the tier. In those rare cases where programming is left on the basic tier, we would suggest the adjustments be based on the cost-of-service.

The Commission states that a cable system with a rate exceeding the benchmark price by a significant amount would be require to reduce it's rate to the benchmark level. We do not understand what criteria would be used to define the word "significant". We feel that much time and effort is going into establishing appropriate benchmarks. If the cable operator exceed this amount, they need to justify it. We agree that the Commission needs to establish a formula to limit how quickly cable systems with rates below the benchmark standard can raise their rates. We also believe that a similar formula needs to be established for the "unreasonable" standard for other programming services as well.

Allowable Increases/ Price Caps:

Any discussion of price caps renders any true regulation impossible. You would take any power to regulate away before it was even realized. The Commission in effect would be regulating the rates. There does have to be a certain amount of flexibility which would reflect the differences in the system design, services and requirements, and so forth. The industry is going through a major evolution. Price-caps tend to encourage more of the same. Both sides will need to be flexible and reasonable in their expectations. It is true that the Commission will need to spend more time resolving disputes. Price-caps are cut and dried, easy. The industry is none of these.

Rates for Non-Basic Cable Programming:

Things will probably continue the way they historically have. No one operator will want to stand too far out in front of the others. Especially if the rate surveys are published on an annual basis. You will see the creation of more tiers as operators move towards ala-carte servicing. The subscriber will end up paying more per channel, but lowering their bill overall because they will only buy what they want to see. The benchmark approach may work now, but in the future when systems will choose to offer different programs in different packages or on an ala-carte basis, there will be no feasible way to set benchmarks covering all of the possible circumstances. You can start with benchmarks which for ease in administering is preferable, but you will have to evolve to the cost-of-service approach.

Regulation of Installation and Equipment:

Establishing an affordable basic tier will have done absolutely no good if the customer cannot afford to have it installed. Installations went from free, to $5.95, to $9.95, to $14.95 to $60.00. That is entirely too much for a home which is already wired. If an installer or technician only has to deal with outside work and not worry about whether the customer is home, then they can fit it anywhere on the route. If the subscriber needs equipment and is willing to do the legwork, he should get a break. It saves the company time and money, why shouldn't that be given back to the customer? If it is an addressable system, the customer calls in, the customer service representative authorizes the equipment and it is done. The company did not have to issue the equipment to the installer, The installer did not have to worry about carrying it, hooking it up, or missing the subscriber. They can move right on to the next call. The subscriber did not have to be inconvenienced by waiting at home for someone to show up and he has saved money. Everyone wins. The installation rates should reflect the amount of service that the customer actually needs. The Commission also asks whether cable operators should be allowed to continue offering free or reduced-rate installations as a promotional tool. We certainly stand behind any effort to reduce the cost to the subscriber.

The same principle holds true for equipment. $2.00 for a basic converter is reasonable. These converters are relatively inexpensive. That rate should be frozen for that type of equipment. A customer who wishes to receive basic only should only pay for a bare-bones piece of equipment, and should only need that equipment if their television is older and not cable ready. As new technologies are developed and new equipment is necessary, the scenario changes.

When we start talking about digital compression, impulse pay-per-view, interactive services and whatever else may be coming, we are talking about more expensive equipment. There is no way around that, but if the cost to the subscriber is prohibitive the new technology will never have a chance to grow. We suggest having options available to the customer. They should be able to purchase equipment outright, lease to own or some other payment type program, or lease. Leasing would be the lowest possible monthly cost. Within these parameters, the rates charged for this type of equipment should then be subject to the "unreasonable" standard.

Remote control units are a separate issue entirely. To charge a customer $3.00 to $5.00 per month when they could go out and buy universal remotes for as little as $39.00 seems unfathomable. If the customer is given that choice and chooses to rent the remote at those rates, then that is their prerogative. But when a customer cannot get a converter that is compatible with certain universal remotes, then they do not have that prerogative. In those cases, the price for rental of remote controls should be lowered to reflect the actual cost. Those remotes have been paid for ten times over. And for the systems that still charge people to use their own remote controls, that is tying, and therefore illegal under the Clayton Act.

Changes in Service:

We have in our franchise agreements that customers may not be charged for the disconnection of all or any part of their service. The fees charged for upgrading service are a marketing tool and need to be based on how badly they want their customers to upgrade service. Premium services have lost a great number of subscribers due to the rise in cost of the basic service, and the competition from video rentals. As a result you see more promotions for lower cost installations. Now cable networks, which many of the operators have an interest in, are being put in a similar category. It is our feeling that the customer cannot be charged for the disconnect of all or any part of your service, and charges for upgrades should be subject to the "unreasonable" standard. When determining whether or not the charge is reasonable, the Commission should take into account the method necessary for accomplishing the upgrade, whether the system is addressable or a truck roll is required.

Affirmative Requests:

The Commission asks whether an affirmative request must be in writing or can be delivered orally. We actually have had more problems with written requests. People have a tendency to write on the bills, which go to another location. Many times the information never makes it to the customer account. It is only after a phone call that the situation gets resolved.

Desired Outcome of Rate Considerations:

Overall, we need a lowering of the basic rate to the range discussed above. We believe that this is expected, not only by the subscribers, but also by the operators as well. Installation charges need to reflect the actual amount of service needed. Charges for equipment needed to receive the basic package must be as low as possible. The "unreasonable" standard must be effective in keeping rates for other programming services from escalating quickly. the standard also is needed to ensure that new technologies will be available to the average customer at a fair price.

Determination of Effective Competition:

We believe that it is the responsibility of the local authority to determine when and if effective competition exists. The local authority is in the best position to make this determination simply because it is in their own yard. It can be determined by permits issued how many homes are passed by a potential competitor, but it would be much easier administratively to require reports. The number of subscribers would be impossible to determine without some sort of reports to the local authority. The same would hold true if the Cable operator were to have the burden of proof or Commission had the responsibility of making a final determination. The information has to be available.

The test of whether effective competition is present has to be based on the franchise area. TCI has undertaken a project to consolidate systems. It is possible that soon this system will encompass an area from the Wisconsin border through the City of Chicago. Using the system wide model, it would be possible that the City of Chicago would have enough effective competition to leave the smaller communities also served by the system virtually unprotected. It can be argued that because these smaller communities would then naturally fall into the same geographic area, and therefore are subject to the uniform rates provisions, that they would naturally benefit from lower rates due to competition. At the same time, each of our communities is distinctly different. That is why we have home rule.

We adamantly oppose any requirement for two or more communities to jointly regulate a cable system. This system now services 15 towns. We have 8 distinctly different franchise agreements. Our member communities pay for the work that the Council does. Sometimes the other communities will participate in various projects, but they have chosen not to join on a full-time basis. Some simply wish to remain autonomous. Some do not want to, or cannot afford to contribute their share financially. We encourage cooperative efforts, but it cannot be forced.

The Commission also asks when the determination of whether effective competition would take place, before or after the certification process. It would make sense to include a statement from the franchising authority that the system is not subject to effective competition on the certification form. The cable operator can seek Commission review, or if later they believe that they have become subject to effective competition, they can petition the franchising authority.

We do not agree with the conclusion that a programmer offering multi-channel programming on a system's leased access or PEG channels can be considered effective competition. The programmer would have to lease half of the cable system to be effective competition. PEG channels are intended for public use and should not be considered in the equation.

Commission Authority:

We do agree that the Commission has the authority to certify a franchising authority in states that may prohibit regulation. We also agree that the Commission is responsible for rate regulation when a certification is denied or revoked, or the local authority states that they cannot meet the certification requirements.

We certainly agree that the Commission has the authority to certify franchising authorities to regulate rates in states that may prohibit rate regulation.

Cost of Franchise Requirements:

This provision should only include the direct cost attributable to the requirement for PEG channels. The statement allowing for costs of providing any services is vague and can lead to line items for the costs of permit applications or the publication of notices which are also required by the franchise.

Implementation and Enforcement:

The initial stages of implementation will be confusing at best. Franchise authorities should have the rate schedules as a requirement to begin with. In those cases where this may not be required, the operator should file their schedule of rates within 30 days from the time the rules take effect. The franchising authority should have 30 days to make their determination. That period will be extended in the event that the operator has not provided reasonably requested information necessary to make such determination. It seems that the legislative intent was for the increase to go into effect within 30 days of notification. It does not seem that Congress intended for a rate to go into effect, only to be found unreasonable after that time period had expired. It is the responsibility of the franchise authority to make that determination within that period. I am sure that is the reason behind requiring that the franchise authority has the available staff to administer regulations.

The Commission asks whether certain price changes such as programming costs or taxes, should trigger regulatory review. We believe that the cable operator should notify the franchising authority and the subscribers of proposed increases. Reasons such as these can certainly be given to justify the increase requested. It is not up to the franchising authority to automatically review rates every single time a cost associated with the operation of the system increases. We could be reviewing rates on a monthly basis.

We agree with the Commission's conclusion that we do not need to hold formal rate hearings. Interested parties can reply with a phone call or by letter.

We agree with the Commission's proposal to require simplified uniform accounting procedures for use in making decisions based on cost-of-service. This will make administration easier and defuse situations where certain operators do not want to provide information. Refusal to provide reasonable requested information is an offense subject to penalties in our franchise agreements.

The Commission will have to be the deciding party in any rate disputes. Failure to comply with a rate decision should have dire consequences. The situation should not be allowed to continue until renewal. If the cable operator raises rates after a denial by the franchising authority, the franchising authority can order refunds. The cable operator can petition the Commission for review. If the Commission finds that the franchising authority has been unreasonable, they may revoke their certification.

We believe that it is clear that the legislation intended for the bulk of the authority to remain on the local level, with review by the Commission as a protection for the cable operator. We have tried to keep our comments as constructive as possible. We commend the Commission on the thorough job that you are doing in establishing these rules.

Respectfully Submitted,

Carole Stannard-Gabor

Carole Stannard-Gabor
Executive Director